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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,956	02/18/2004	Jochim Koch	71164	2137
23872	7590	12/17/2004	EXAMINER	
MCGLEW & TUTTLE, PC 1 SCARBOROUGH STATION PLAZA SCARBOROUGH, NY 10510-0827			GILBERT, SAMUEL G	
			ART UNIT	PAPER NUMBER
			3736	
DATE MAILED: 12/17/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/780,956	KOCH, JOCHIM
	<b>Examiner</b>	<b>Art Unit</b>
	Samuel G Gilbert	3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,2,7-13 and 17-19 is/are rejected.
- 7) Claim(s) 3-6 and 14-16 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 2/18/2004.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement filed 2/18/2004 has been considered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 - the first fan, line 2, lacks antecedent basis.

Claim 18 - the first fan, line 2, lacks antecedent basis.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 7, 8, 10-12, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldberg et al (6,296,606) in view of Pelosi et al. (3626837).

Claims 1 and 12 - Goldberg et al teaches a hoodless incubator, as shown in figure 2, including a bed -38-, a fan -78-, heating -78- and humidifying device -134-, a channel -42- surrounding the bed and a feed channel shown at least in part by elements -110- and -126-. Goldberg et al. forms an air curtain around the infant by passing conditioned air out channel -42- and collecting the air at exhaust opening -44- but does not teach an air jet unit arranged above the bed forming an impinging jet having an air-conditioned inner core jet and a non-air-conditioned jacket jet. The concept of jacketed air curtains are well known in the air curtain arts as shown by Pelosi et al which teaches jacketed jet air curtains used in medical situations. The jacketed air curtains originate from jets above the patient and recirculate some of the air from below the patient to protect the patient by maintaining the patient in clean air. It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the concept of jacketed air curtains as taught by Pelosi et al in the incubator of Goldberg. In order to implement the concept in Goldberg the direction of airflow would need to be reversed and a jet unit provided above and extending over the patient bed attached generally where the exhaust opening. Pelosi teaches a conditioned inner core jet and a non air conditioned jacket jet to reduce the cost/equipment needed to maintain the patient in clean air column 1 line 70 through column 2 line 10.

Claims 7 and 17 - Goldberg teaches a radiant heater -56-.

Claim 8 - the examiner is taking the air curtain as an air outlet to the environment.

Claims 10, 11, and 19 - the humidity and temperature is controlled as claimed and the claimed ranges are expected within the medical art for use in incubators to maintain the infant being cared for in the most desirable state.

Claims 2 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldberg and Pelosi as applied to claims 1 and 12 above, and further in view of Howorth(4,009,647). The combination of Goldberg and Pelosi teaches a device as claimed but does not teach a second fan in the second feed channel. Howorth teaches supplying each portion of the air curtain independently with its own ducting, fan and any other desired features. Applicant's attention is invited to column 2 lines 30-34. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include independent supply devices for each portion of the air curtain as taught by Howorth to gain the advantage of having control over individual air supplies as taught by Howorth.

#### ***Allowable Subject Matter***

Claims 3-6, and 14-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 9 and 18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents 3,511,162; 3,625,133; 5,840,010; 3,380,369; and 3,803,995 teach related air curtain and incubator devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G Gilbert whose telephone number is 571-272-4725. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Samuel G Gilbert  
Primary Examiner  
Art Unit 3736

sgg